



STW

Customer No. 22,852
Attorney Docket No. 06028.0028-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Francois COTTARD et al.

Application No.: 10/690,696

Filed: October 21, 2003

For: OXIDATION DYEING COMPOSITION
FOR KERATIN FIBERS COMPRISING A
CATIONIC POLY(VINYLLACTAM) AND
AT LEAST ONE C₁₀-C₁₄ FATTY ACID,
METHODS AND DEVICES FOR
OXIDATION DYEING

Group Art Unit: 1751

Examiner: Eisa B. ELHILO

Confirmation No.: 9761

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

Sir:

SUPPLEMENTAL SUBMISSION AND REMARKS

Further to the Request for Continued Examination (RCE) and Response and Submission Under 37 C.F.R. § 1.114 timely filed on November 23, 2005, with a petition for extension of time, Applicants submit the enclosed Declaration Under 37 C.F.R. § 1.132 ("Declaration") of Marie-Pascale AUDOUSSET together with the Remarks below to supplement the timely-filed response. Accordingly, no further fees are due for the filing of this paper. Applicants respectfully request that Examiner Elhilo consider the enclosed Declaration in combination with the Submission filed November 22, 2005.

The Declaration of Dr. Audousset shows that one skilled in the art would not have had a reasonable expectation of success in replacing the oleic acid in

Laurent's dyeing composition with the lauric acid discolored in *Cotteret*. Moreover, the Declaration undermines the Examiner's position that "*Cotteret* teaches the equivalence between oleic acid and lauric acid in the dyeing compositions that lead to the formulation of intense shade of colors." *Final Office Action*, page 3.

Specifically, in her Declaration, M. AUDOUSSET describes testing with Inventive Composition A, comprising natural lauric acid, and Comparative Composition B, comprising oleic acid. The results indicate that when each dyeing composition was mixed with the oxidizing composition, the mixture containing Inventive Composition A was homogeneous while Comparative Composition B was lumpy. Moreover, the ease in mixing with Invention Composition A was greater than that of Composition B. Thus, Composition B was less easy to prepare and more difficult to apply to the hair due to its clumpy texture.

Inventive Composition A also provided better coloration. Indeed, the coloration results indicate that Invention Composition A provided superior coloration selectivity than Composition B. Thus, when each composition is applied to hair, Inventive Composition will provide a more uniform color along the hair strand.

The results above indicate that the use of oleic acid leads to an inferior dyeing composition. Contrary to the Examiner's current position, these results demonstrate that not all fatty acids are equivalent. Rather, one skilled in the art would not have had a reasonable expectation of success in swapping one fatty acid for another. Thus, the Declaration supports Applicants' position that the Examiner has not established a prima facie case of obviousness.

Examiner Elhilo is invited to call Mareesa Frederick at (202) 408-4103 if he has any questions on the Declaration or if he believes that the results shown therein do not put this case in condition for allowance.

If there is any fee due in connection with the filing of this Submission, please charge the fee to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: December 22, 2005

By: Mareesa A. Frederick
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